IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7449 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUNVANT VASANTLAL JAYSWAL

Versus

STATE OF GUJARAST

Appearance:

1. Special Civil Application No. 7449 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 22/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Ms. Subhadra Patel for the petitioner detenu and ld. AGP Ms. HB Punani for the State.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 10.06.2004 passed by the District Magistrate, Vadodara in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA ACt.

3. The order under challenge is based on the grounds considered by the detaining authority that are conveyed to the detenu. It reveals that for passing the detention order, the detaining authority has mainly considered the fact of registration of 6 different offences registered against the present petitioner detenu under different sections of Bombay Prohibition Act and that too by same police station namely Dabhoi Taluka Police Station between 10.07.2003 and 04.05.2004 i.e. within a span of about 10 months. Details qua all these offences are given in a tabular form in the grounds of detention supplied to the detenu. The detaining authority has also considered certain facts stated by three witnesses in their statements recorded by the sponsoring authority on 15.04.2004, which were firstly verified by DySP on 18.04.2004 and thereafter by the detaining authority on 29.05.2004.

4. The petitioner has challenged the legality and validity of the order of detention on number of grounds as mentioned in the memo of the petition. Ld. counsel Ms. Patel for the petitioner, has taken this Court through the contentions raised in the petition. However, ld. counsel has focussed his arguments mainly on the ground that the order under challenge is not sustainable as there is delay in dealing with representation as well as in communicating the decision on representation to the detenu. The representation made by the detenu has not been promptly considered and decision taken by the State Government was not conveyed to the petitioner at the earliest. This delay goes to the root of the validity of the detention order and, therefore, the same can be terminated. While developing the submission, ld. counsel has pointed out that representation was made by the detenu to the detaining authority on 15.06.2004 and undisputedly the same has reached to the office of District Magistrate - Detaining Authority on 16.06.2004. The original acknowledgment received by the detenu is

shown to the Court. This representation has been considered and decision is taken by the authority concerned on 03.07.2004. So, the time consumed in considering the representation is of about 17 days which was required to be explained convincingly by the other side, which has not been explained. It is further submitted that this is a case of un-explained delay of 17 days caused in deciding the representation. It is further submitted by ld. counsel appearing for the detenu that there is also delay of about a day or two in communicating the decision of the State Government to the detenu because the date of rejection is 03.07.2004 and the date of communication is 08.07.2004. The detenu was in District Jail, Nadiad. So, it was possible to convey the decision to the detenu within 48 hours. There is nothing on record to show when the communication was despatched by the office of the authority concerned. Technically therefore, it is rightly argued that this is a case of unexplained delay of 22 to 23 days. It is rightly argued that in view of the ratio of the decision of the Apex Court in the case of Harish Pahwa v/s State of U.P., AIR 1981 SC 1126, the impugned order of detention also requires to be quashed on the ground of delay in communicating decision on the representation to the detenu promptly. Relevant observations of the Apex Court are reproduced as under:-

> "..... We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This is not having been done in the present case we have no option but to declare the detention unconstitutional."

5. Though it is argued that though it was possible

to pass the order of preventive detention at the earliest at any time after 16.04.2004, for the reasons best known to the sponsoring authority, papers were placed before the detaining authority at any time either on 07.06.2004 or any day thereafter. However, it is not necessary to appreciate this aspect in the present case as the impugned order of detention requires to be quashed on the sole ground of delay in dealing with representation and delay in communicating the same promptly.

6. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 10.06.2004 passed by the District Magistrate, Vadodara is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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